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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219075
Party	Plaintiff Interactive Life Forms, LLC
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Submission	Motion to Strike
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Date	01/05/2015
Attachments	ILF - ILF vs. GQ Associates - Motion to Strike.pdf(1088168 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re U.S. Trademark Application Serial No. 86/281,553 for the mark FLESHMATES, filed on May 14, 2014, published on October 28, 2014, and having the current owner of record GQ Associates.

Interactive Life Forms, LLC	§	
	§	
and	§	
	§	
Steve Shubin,	§	
	§	
Opposers,	§	
	§	
vs.	§	Opposition No. 91219075
	§	
GQ Associates,	§	
	§	
Applicant.	§	

MOTION TO STRIKE (CERTAIN OF) APPLICANT'S AFFIRMATIVE DEFENSES

Like throwing spaghetti against a wall to see what sticks, Applicant has asserted twenty (20) affirmative defenses in this proceeding. Fortunately, we know what does not stick. In an unrelated proceeding, Opposition No. 91214783, twenty (20) affirmative defenses were raised by the very same counsel who represents the applicant in this proceeding. A motion to strike thirteen (13) of those affirmative defenses was granted in its entirety. Those thirteen (13) defenses were raised here.

Opposers Interactive Life Forms, LLC (hereafter "ILF") and Steve Shubin (hereafter "Shubin") (collectively "Opposers") hereby move this honorable Board to strike the First, Second, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Sixteenth and Eighteenth Affirmative Defenses pleaded by Applicant in Applicant's Answer to Opposers' Notice of Opposition (Applicant's "Answer") filed herein. In support of their Motion, Opposers respectfully submit the following.

I. STATEMENT OF THE CASE

This is an opposition to registration of U.S. Trademark Application Serial No. 86/281,553 for the mark FLESHMATES, filed on May 14, 2014, published on October 28, 2014, and having the current owner of record GQ Associates. The application seeks registration of the FLESHMATES mark for the following goods and services:

> INTERNATIONAL CLASS 003:
> Accessories for personal massage, namely, massage oils;
>
> INTERNATIONAL CLASS 010:
> Adult sexual stimulation aids, namely, vibrators, dildos, artificial penises, artificial vaginas, benwa balls, love dolls, penis enlargers, masturbation sleeves that allow for the collection of human sperm, masturbation devices in the nature of artificial penises and artificial vaginas, rings for stimulating the penis, anal beads, anal plugs, nipple clamps, reproductions of parts of the male and female anatomy, electric and non-electric massage apparatus and accessories for personal massage and stimulation, namely, massage mitts and electric vibrating massager; kits consisting primarily of adult sexual stimulation aids; Condoms; and
>
> INTERNATIONAL CLASS 035:
> Online retail and retail store services, featuring adult entertainment and adult novelties, prerecorded video tapes, DVDs, books, adult toys and novelties, underwear, lingerie, erotic clothing and costumes, adult sexual inspired gifts, body care preparations, beauty care preparations, body lotions, massage oils, shaving products, personal lubricants, anesthetics for non-surgical use, adult sexual aids, adult games, cleaning products, condoms; Catalog ordering services featuring adult entertainment and adult novelties, prerecorded video tapes, DVDs, books, adult toys and novelties, underwear, lingerie, erotic clothing and costumes, adult sexual inspired gifts, body care preparations, beauty care preparations, body lotions, massage oils, shaving products, personal lubricants, anesthetics for non-surgical use, adult sexual aids, adult games, cleaning products, condoms.

The opposed application is based on Applicant's intent to use the mark.

The Notice of Opposition pleads a likelihood of confusion as set forth under 15 U.S. Code § 1052(d), asserts that Opposers believe they will be damaged by the registration Applicant seeks, and sets forth the pre-existing priority of Opposers' Family of FLESH Marks in the '503 Registration, '109 Registration, '433 Registration, '865 Registration, '866 Registration, '173

Registration and '795 Registration cited by Opposers (e.g., FLESHLIGHT, FLESHJACK, FLESHWASH, FLESHLUBE, FLESHLIGHT GIRLS). In response thereto, Applicant denied the salient allegations of the Notice of Opposition and asserted 20 "affirmative defenses" spanning seven (7) pages. For convenience of the Board, a copy of those Affirmative Defenses is attached as Exhibit A.

II. ARGUMENT

A motion to strike is timely if made before responding to the pleading that is the subject of the motion or, if a response is not allowed, within twenty-one days after being served with the pleading plus five additional days if the pleading is served by first-class mail, "Express Mail," or overnight courier. See Fed. R. Civ. P. 12(f) and Trademark Rule 2.119(c). The certificate of service asserts that the Answer was served by United States Postal Service mail addressed to Opposer's attorney(s) of record and correspondent(s) on December 8, 2014. Accordingly, this motion is filed within the allowed period. It is timely.

Pursuant to Fed. R. Civ. P. 12(f), the Board may order stricken from a pleading any insufficient defense, or any redundant, immaterial, impertinent or scandalous matter. See also Trademark Rule 2.116(a) and TBMP § 506.01. While motions to strike are not favored, they should be granted in appropriate circumstances. See TBMP § 506, and cases cited in n. 7 thereto; see also Ohio State University v. Ohio University, 51 USPQ2d 1289, 1292 (TTAB 1999).

Opposers submit that this case presents such appropriate circumstances to strike. It would be not only a waste of time and resources for Opposers, and potentially for the Board, to move forward with discovery on, and further litigation of, thirteen "defenses" which are immaterial, impertinent, and/or insufficient. Such tremendous waste can and should be averted.

A. The notice of opposition adequately pleads a claim for injury and damage, a basis to oppose, and standing (Applicant's First, Second, Fifth and Thirteenth Defenses)

An assertion of "no injury or damage" goes to the question of standing and an assertion that opposers do not have a basis either in law or fact to oppose registration of applicant's mark is, in essence, an assertion that opposers have failed to state a claim for relief. Failure to state a claim upon which relief can be granted and lack of standing are not affirmative defenses. See Harjo v. Pro Football Inc., 30 USPQ2d 1828, 1830 (TTAB 1994).

However, "[w]hile Fed. R. Civ. P. 12(b)(6) permits a defendant to assert in the answer the 'defense' of failure to state a claim upon which relief can be granted, it necessarily follows that a plaintiff may utilize this assertion to test the sufficiency of the defense in advance of trial by moving under Fed. R. Civ. P. 12(f) to strike the 'defense' from the defendant's answer." Order of Sons of Italy in America v. Profumi Fratelli Nostra AG, 36 USPQ2d 1221, 1222 (TTAB 1995).

In order to withstand the assertion that opposers have failed to state a claim for relief, opposers need only allege such facts as would, if proved, establish (1) that they have standing to maintain the proceeding, and (2) that a valid ground exists for opposing the mark. See Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000).

On the question of standing, a plaintiff need only demonstrate that it has a "real interest," i.e., a personal stake, in the outcome of the proceeding and a reasonable basis for its belief of damage. Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). A belief in likely damage can be shown by establishing a direct commercial interest. See International Order of Job's Daughters v. Lindeburg & Co., 727 F.2d 1087, 220 USPQ 1017, 1019 (Fed. Cir. 1984). The purpose of the standing requirement is to avoid litigation where there is no real controversy between the parties, i.e., to weed out intermeddlers. See Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 USPQ 184, (CCPA 1982).

Where, as here, there are joint opposers, each must plead and ultimately prove its standing. See Chemical New York Corp. v. Conmar Form Systems, Inc., 1 USPQ2d 1139, 1142 (TTAB 1986). Opposer Shubin is the owner of record, and thus Opposer ILF is logically the licensee, of the following:[1]

> U.S. Trademark Registration No. 2,225,503 for FLESHLIGHT for "Adult novelty device for discreet collection of human sperm" in International Class 10.
>
> U.S. Trademark Registration No. 3,479,109 for FLESHLIGHT (stylized) for "Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm" in International Class 10.
>
> U.S. Trademark Registration No. 3,479,433 for FLESHLIGHT GIRLS for "Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm" in International Class 10.
>
> U.S. Trademark Registration No. 3,497,865 for FLESHJACK for "Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm" in International Class 10.
>
> U.S. Trademark Registration No. 3,497,866 for FLESHJACK (stylized) for "Adult sexual aids, namely, masturbation sleeves that allow for the discreet collection of human sperm" in International Class 10.
>
> U.S. Trademark Registration No. 3,826,173 for FLESHLUBE for "Water-based personal lubricants" in International Class 5.
>
> U.S. Trademark Registration No. 3,955,795 ("the '795 Registration") for FLESHWASH for "Liquid soap; adult toy cleaner" in International Class 3.

Moreover, Opposers have pled that they benefit from a number of channels of trade in connection with the goods recited in the '503 Registration, '109 Registration, '433 Registration, '865 Registration, '866 Registration, '173 Registration and '795 Registration, including brick and mortar stores, and online stores such as those found on Amazon.com, and the FLESHLIGHT.COM and FLESHJACK.COM websites (websites owned and operated by Opposers). Opposers further pled, with respect to the FLESHLIGHT.COM and FLESHJACK.COM websites, that at least the following are sold:

> Creams, gels, balms, massaging oils, vibrators, dildos, artificial penises, artificial vaginas, benwa balls, penis enlargers, masturbation sleeves that allow for the collection of human

1 License agreement attached as Exhibit B.

sperm, masturbation devices in the nature of artificial penises and artificial vaginas, rings for stimulating the penis, anal stimulators, anal plugs, reproductions of parts of the male and female anatomy, electric and non-electric massage apparatus and accessories for personal massage and stimulation including electric vibrating massagers, kits consisting primarily of adult sexual stimulation aids, and condoms.

In short, Opposers pled, the above comprise just about every good in Class 3 and Class 10 listed in Applicant's opposed application. With respect to Class 35 in Applicant's opposed application, Opposers' FLESHLIGHT.COM and FLESHJACK.COM websites are online retail services, and Opposers' FLESHLIGHTDISTRIBUTION.COM website supports retail store services – again, with respect to just about everything listed in Applicant's opposed application.

The foregoing, if proved, would establish both standing and a valid ground for opposition. Opposers respectfully submit that it would be proper if the Board finds that Opposers have sufficiently pleaded their claim of likelihood of confusion, damage and priority. Accordingly, Defense Nos. 1, 2, 5 and 13 should be hereby STRIKEN.

B. Applicant's Collateral Attacks Cannot Be Considered (Applicant's Eighth, Ninth, and Sixteenth Defenses)

With respect to Opposers' pled registrations, each of Applicant's Eighth ("Insufficient Prior Exclusive Rights"), Ninth ("Lack of Secondary Meaning"), and Sixteenth ("Failure to Police") Defenses amount to a collateral attack on the validity of the pled registrations. Section 7(b) of the Trademark Act provides that "[a] certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate."

Opposers' pled registrations do not rely on claims of secondary distinctiveness. They are therefore considered inherently distinctive. Lane Capital Management, Inc. v. Lane Capital Management, Inc., 192 F.3d 337, 344; 52 USPQ2d 1094, 1098 (2d Cir. 1999) ("Registration by the PTO without proof of secondary meaning creates the presumption that the mark is more than merely descriptive and, thus, that the mark is inherently distinctive."). Applicant's Ninth ("Lack of Secondary Meaning") Defense is, simply put, impermissible.

Moreover, Applicant did not file a single counterclaim for cancellation of any of Opposers' pled registrations. It is well understood that "[a]n attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration." 37 C.F.R. §2.106(b)(2)(ii). Therefore, each of Applicant's Eighth, Ninth, and Sixteenth Defenses "manifestly contravenes the basic requirement of" this regulation, and as such is improperly pleaded. See Textron, Inc. v. The Gillette Company, 180 USPQ 152, 153 (TTAB 1973). See also TBMP § 311.02(b); Food Specialty Co. v. Standard Products Company, 406 F.2d 1397, 161 USPQ 46 (C.C.P.A. 1969) (collateral attack on grounds mark is merely descriptive); Fort James Operating Co. v. Royal Paper Converting Inc., 83 USPQ2d 1624, 1626 n.1 (TTAB 2007); Chicago Bears Football Club Inc. v. 12th Man Tennessee LLC, 83 USPQ2d 1073, 1083 (TTAB 2007).

Applicant's assertions that Opposers do not have "prior exclusive rights in the United States" and that there is a lack of secondary meaning constitute collateral attacks on the validity of the pleaded registration. Similarly, an assertion that Opposers have failed to police the use of their mark is essentially a claim of abandonment. Indeed, Opposers have actively litigated to protect their trademark rights. The dockets of these suits are publically available and easily accessible for applicant to have conducted its investigation under FRCP 11.

As applicant has not counterclaimed or otherwise petitioned to cancel any pled registration, Defense Nos. 8, 9 and 16 should not be heard and should be hereby STRICKEN. See Trademark Rule 2.106(b)(2)(ii).

C. Applicant's Laches and Acquiescence Defenses are Impertinent and Scandalous (Applicant's Sixth and Seventh Defenses)

While Applicant has pled no facts in support of its claims of Laches or Acquiescence, what really matters is that the defenses of laches and acquiescence are tied to a defendant's registration of a mark - as opposed to a defendant's use - in the context of a Board proceeding. As such, laches and acquiescence cannot begin to run until the mark in question is published for opposition. See National Cable Television Association, Inc. v. American Cinema Editors, Inc., 937 F.2d 1572, 19 USPQ2d 1424, 1432 (Fed. Cir. 1991) (laches) and Krause v. Krause Publications Inc., 76 USPQ2d 1904, 1914 (TTAB 2005) (acquiescence). Here, Opposers timely filed the notice of opposition. Indeed, Opposers filed the instant opposition on the very same day the FLESHMATES application was published for opposition. There has been no undue delay so as to warrant consideration of these defenses. Defense Nos. 6 and 7 should also be STRICKEN.

D. Applicant's Inapt and Unsubstantiated Waiver, Estoppel and Unclean Hands Claims (Applicant's Tenth, Eleventh and Twelfth Defenses)

Applicant has pled no facts in support of its Waiver, Estoppel or Unclean Hands claims. Indeed, applicant has failed to give Opposers adequate notice of the basis of these defenses. See, e.g., Midwest Plastic Fabricators Inc. v Underwriters Laboratories Inc., 5 USPQ2d 1067, 1069 (TTAB 1987) (allegation of unclean hands must be clear, specific, relevant and not merely conclusory in nature). Thus, Defense Nos. 10, 11 and 12 should be hereby STRICKEN.

E. Applicant's Raises the Impertinent, Non-Existent Defense of "Trademark Bully" (Applicant's Eighteenth Defense)

Such a claim is not a defense, either affirmative or otherwise. There is no case law to support such a claim. Counsel for Applicant was previously admonished by the Board, in Opposition No. 91214783, that such a claim was impertinent. The defense should be STRICKEN.

III. CONCLUSION

In light of the foregoing, Opposers respectfully submit that the instant motion to strike should be granted, and that an order be issued striking each of Applicant's First, Second, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Sixteenth and Eighteenth Affirmative Defenses in Applicant's Answer.

Opposers believe that no fees are due for the filing of this motion. Should any fees be due, authorization is hereby granted to the U.S. Patent and Trademark Office to deduct such fees for the present opposition from Conley Rose Deposit Account No. 501515.

Respectfully submitted,

Dated: January 5, 2015

By: Kristin Jordan Harkins

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ATTORNEYS FOR OPPOSERS

CERTIFICATE OF TRANSMISSION UNDER TBMP 110

I HEREBY CERTIFY that a true and correct copy of this document, *Motion to Strike (Certain of) Applicant's Affirmative Defenses*, in Opposition No. 91219075 opposing registration of U.S. Trademark Application Serial No. 86/281,553 for the mark FLESHMATES, is being filed electronically through http://estta.uspto.gov via the Trademark Trial and Appeal Board Electronic Filing System.

On Monday, the 5th day of January, 2015.

Teresa Ryan

CERTIFICATE OF SERVICE UNDER TBMP 113

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion to Strike (Certain of) Applicant's Affirmative Defenses*, in Opposition No. 91219075 opposing registration of U.S. Trademark Application Serial No. 86/281,553 for the mark FLESHMATES, is being sent by First Class U.S. Mail, postage prepaid, to counsel for Applicant, GQ Associates, as follows:

Kuscha Hatami
Raj Abhyanker P.C. dba Legalforce
1580 W El Camino Real Ste 13
Mountain View, California 94040-2463
United States

On Monday, the 5th day of January, 2015.

Danielle Lehrman

EXHIBIT A

Applicant's Affirmative Defenses

affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

26. Applicant incorporates by reference Paragraphs 1 – 25, inclusive as if fully set forth herein.

27. Opposer's claims are barred because the Notice of Opposition fails to state a claim upon which relief can be granted

SECOND AFFIRMATIVE DEFENSE
NO INJURY OR DAMAGE

28. Applicant incorporates by reference Paragraphs 1 – 27, inclusive as if fully set forth herein.

29. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's U.S. Application Serial Nos. 86/281,553 for the mark FLESHMATES.

THIRD AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

30. Applicant incorporates by reference Paragraphs 1 – 29, inclusive as if fully set forth herein.

31. Opposer does not own common law rights or any registered Marks that would be confused with Applicant's Mark in terms of sight, sound, meaning and commercial impression.

32. Applicant's Mark differs in terms of sight, sound, and meaning from Opposer's alleged Marks and has a distinct commercial impression from Opposer's alleged Marks.

33. Applicant's registration of Applicant's Mark does not create a likelihood of confusion among consumers that Applicant's goods and services are offered, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use or registration of Applicant's Mark create the likelihood that consumers will falsely believe that Applicant and Opposer are affiliated in any way.

34. In addition, non of Opposer's pleaded '503, '109, '433, '865, '866, '173, and '795 registrations were cited to Applicant in any Office Action, by the USPTO and/or Applicant's Examining Attorney with the USPTO, for a likelihood of confusion, further supporting Applicant's position that confusion as to Applicant's Mark and Opposer's registrations is not likely.

FOURTH AFFIRMATIVE DEFENSE
LACK OF ACTUAL CONFUSION

35. Applicant incorporates by reference Paragraphs 1 – 34, inclusive as if fully set forth herein.

36. Applicant filed its FLESHMATES Mark mark in connection with Applicant's pleaded goods and services in International Classes 003, 010, and 035 on May 14, 2014 and has not experienced any confusion with Opposer or its goods and/or services, if any. On information and believe, Opposer also has not experienced

any actual confusion, notwithstanding Applicant's filing of its application since May 14, 2014.

FIFTH AFFIRMATIVE DEFENSE
LACK OF STANDING

37. Applicant incorporates by reference Paragraphs 1 – 36, inclusive as if fully set forth herein.

38. Opposer's claims are barred, in whole or in part, because Opposer does not have standing in that Opposer does not have rights, superior or otherwise, sufficient to support the Notice of Opposition.

SIXTH AFFIRMATIVE DEFENSE
LACHES

39. Applicant incorporates by reference Paragraphs 1 – 38, inclusive as if fully set forth herein.

40. Opposer's claims are barred, in whole or in part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE
ACQUIESCENCE

41. Applicant incorporates by reference Paragraphs 1 – 40, inclusive as if fully set forth herein.

42. Opposer's claims are barred, in whole or in part, by the doctrine of Acquiescence.

EIGHTH AFFIRMATIVE DEFENSE
INSUFFICIENT PRIOR EXCLUSIVE RIGHTS

43. Applicant incorporates by reference Paragraphs 1 – 42, inclusive as if fully set forth herein.

44. Opposer's claims are barred, in whole or in part, because Opposer cannot establish prior exclusive rights in the United States sufficient to bar Applicant's registrations of Applicant's FLESHMATES Mark.

NINTH AFFIRMATIVE DEFENSE
LACK OF SECONDARY MEANING

45. Applicant incorporates by reference Paragraphs 1 – 44, inclusive as if fully set forth herein.

46. Opposer's claims are barred, in whole or in part, by the lack of sufficient secondary meaning in Opposer's Marks in question in this matter.

TENTH AFFIRMATIVE DEFENSE
Waiver

47. Applicant incorporates by reference Paragraphs 1 – 46, inclusive as if fully set forth herein.

48. The Opposer's claims are barred, in whole or in part, by the doctrine of Waiver.

ELEVENTH AFFIRMATIVE DEFENSE
ESTOPPEL

49. Applicant incorporates by reference Paragraphs 1 – 48, inclusive as if fully set forth herein.

50. Opposer's claims are barred, in whole or in part, by the doctrine of Estoppel.

TWELFTH AFFIRMATIVE DEFENSE
UNCLEAN HANDS

51. Applicant incorporates by reference Paragraphs 1 – 50, inclusive as if fully set forth herein.

52. The Opposer's claims are barred, in whole or in part, by the doctrine of unclean hands, in that Opposer filed this Notice of Opposition for the sole purpose to harass and extort Applicant.

THIRTEENTH AFFIRMATIVE DEFENSE
NO BASIS

53. Applicant incorporates by reference Paragraphs 1 – 52, inclusive as if fully set forth herein.

54. Opposer has no basis either in law or fact, to oppose registration of Applicant's marks.

FOURTEENTH AFFIRMATIVE DEFENSE
SOPHISTICATED PURCHASERS

55. Applicant incorporates by reference Paragraphs 1 – 54, inclusive as if fully set forth herein.

56. There is no likelihood of confusion among the relevant purchasing public because the relevant purchasing public consists of highly sophisticated, discriminating, and experienced consumers who are certain to be able to distinguish Applicant's and Opposer's respective trademarks, goods, and/or services. As such, there is no likelihood at all that the relevant purchasing public might be confused about the use of the term FLESHMATES by Applicant.

57. In addition, there is no likelihood of confusion among the relevant purchasing public because the relevant purchasing public consists of highly sophisticated brand loyal consumers who's brand loyalty is certain to be able to allow them to distinguish Applicant's and Opposer's respective trademarks, goods, and/or services. As such, there is no likelihood at all that the relevant

purchasing public might be confused about the use of the term FLESHMATES by Applicant.

FIFTEENTH AFFIRMATIVE DEFENSE
DIFFERING COMMERCIAL IMPRESSIONS

58. Applicant incorporates by reference Paragraphs 1 – 57, inclusive as if fully set forth herein.

59. Applicant's marks and Opposer's marks have very different commercial impressions.

SIXTEENTH AFFIRMATIVE DEFENSE
FAILURE TO POLICE

60. Applicant incorporates by reference Paragraphs 1 – 59, inclusive as if fully set forth herein.

61. Opposer has failed to adequately maintain, police, or enforce trademark or proprietary rights they may have in their alleged trademarks specifically, there currently are numerous individuals and/or entities that have adopted the term FLESH and/or phonetic and foreign equivalents as literal elements as part of the goods and/or services that they offer, which, on information and believe are individuals and/or entities not affiliated with, or sponsored by Opposer, nor has Opposer attempted to halt these individuals from their use of the term FLESH.

SEVENTEENTH AFFIRMATIVE DEFENSE
STRICT PROOF

62. Applicant incorporates by reference Paragraphs 1 – 61, inclusive as if fully set forth herein.

63. Applicant calls for strict proof of all of the allegations against Applicant.

EIGHTEENTH AFFIRMATIVE DEFENSE

TRADEMARK BULLY

64. Applicant incorporates by reference Paragraphs 1 – 64, inclusive as if fully set forth herein.

65. Opposer is engaged in the practice of "trademark bullying" which is described as a trademark owner that uses its trademark rights to harass and intimidate another business beyond what the law might reasonably be interpreted to allow.

66. Applicant is a small business that is harmed by Opposer's litigation tactics wherein Opposer is attempting to enforce its alleged trademark rights beyond a reasonable interpretation of the scope of the rights legitimately granted to the trademark owners.

NINETEENTH AFFIRMATIVE DEFENSE
OPPOSER DOES NOT OWN ANY FAMOUS MARKS

67. Applicant incorporates by reference Paragraphs 1 – 67, inclusive as if fully set forth herein.

68. Opposer's pleaded marks are neither famous nor distinctive.

TWENTIETH AFFIRMATIVE DEFENSE

69. Applicant incorporates by reference Paragraphs 1 – 68, inclusive as if fully set forth herein.

70. Applicant reserves the right to assert any and all other affirmative defenses of which Applicant becomes aware during the pendency of this matter.

WHEREFORE, Applicant requests judgment as follows:

1. That the Notice of Opposition be dismissed with prejudice;

EXHIBIT B

License Agreement Between Opposer Steve Shubin and

Oppposer Interactive Life Forms, LLC

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the "Agreement") is made and entered into as of the 14th day of 2009 ("Effective Date") by and between Steve A. Shubin, Sr. ("Licensor"); and Interactive Life Forms, LLC, a Texas limited liability corporation ("Licensee").

1. Trademark.

1.1 License. During the term of this Agreement, Licensor grants to Licensee a worldwide, perpetual, irrevocable, exclusive, license (including the right to sublicense) to use and disclose the trademarks (including, without limitation, the registrations for and applications to register the trademarks) and all associated logos and designs of the trademarks set forth on Exhibit A attached hereto (the "Marks") in connection with the manufacture, sales, distribution or other exploitation of adult novelty products and additional products as agreed by the parties pursuant to Section 3.6 hereof. All rights granted under this Agreement to Licensee will extend to Licensee's affiliates, which are currently existing or later acquired that (i) control, (ii) are controlled by, or (iii) are under common control with Licensee ("Affiliates"). An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through the ownership or voting securities, by contract, or otherwise

1.2 Use. Licensee will apply, use, and reproduce at least one of the Marks, in the size, place, and manner Licensor may indicate from time to time. Licensee shall include where appropriate the designations ® or TM and a statement that the Marks are used under license from Licensor.

1.3 Assignment of Goodwill. If Licensee, in the course of performing its services hereunder, acquires any goodwill or reputation in any of the Marks, all such goodwill or reputation will automatically vest in Licensor when and as, on an on-going basis, such acquisition of goodwill or reputation occurs, as well as at the expiration or termination of this Agreement, without any separate payment or other consideration of any kind to Licensee, and Licensee agrees to take all such actions necessary to effect such vesting. Licensee will not contest the validity of any of the Marks or Licensor's exclusive ownership of them. During the term of this Agreement, Licensee will not adopt, use, or register, whether as a corporate name, trademark, service mark, or other indication of origin, any of the Marks, or any word or mark confusingly similar to them in any jurisdiction.

1.4 Effect of Termination. Upon the expiration or termination of this Agreement for any reason, Licensee will immediately stop all activities hereunder, cease using the Marks, and not thereafter use the Marks for any reason

1.5 Compliance with Law. Licensee shall comply with all applicable laws and regulations and obtain all appropriate government approvals pertaining to its use of the Marks, and its sale, distribution and advertising of the services under the Mark.

1.6 No Disparagement of Licensor or Mark. Licensee shall not use the Marks in connection with any activity that disparages Licensor or its products or services, or that damages the reputation for quality inherent in the Marks.

2. Term and Termination

2.1 Term. The term of this Agreement will begin on the Effective Date and continue until terminated in accordance with the provisions of this Agreement.

2.2 Termination by Licensor.

(a) Breach. In the event Licensee breaches any of its material obligations under this Agreement, Licensor may terminate this Agreement and the license granted in it by giving notice in writing to Licensee of the breach. In the event Licensee does not correct or eliminate the breach within 10 days from the date of receipt of such notice, this Agreement, including the license to use the Marks, shall terminate at the end of the 10 day period.

(b) Option. Licensor may terminate this Agreement and the license granted in it by giving 30 days prior written notice in writing to Licensee of such intent, in which event this Agreement, including the license to use the Marks, shall terminate at the end of the 30 day period.

(c) Change of Control. Licensor will have the right to terminate this Agreement and the license granted in it by giving written notice to Licensee in the event of a Change of Control of Licensee. A "Change of Control" means a transaction in which there is a change in the person or persons holding a controlling interest in the equity of Licensee.

2.3 Automatic Termination.

(a) In the event that Licensee dissolves or liquidates or ceases to engage in its business, files a petition in bankruptcy, is adjudicated a bankrupt or files a petition or otherwise seeks relief under or pursuant to any bankruptcy, insolvency or reorganization statute or proceeding, or if a petition in bankruptcy is filed against it and is not discharged within 60 days thereafter or if Licensee makes an assignment for the benefit of its creditors or if a custodian, receiver or trustee is appointed for it or for a substantial portion of its business or assets and such appointment is not discharged within 60 days thereafter, then this Agreement will terminate automatically.

(b) In the event Licensee ceases use the Marks with an intent not to resume, the licenses granted under this Agreement will terminate automatically.

2.4 Effect of Termination. In the event of any termination or expiration of this Agreement, Licensee shall discontinue immediately all use of the Marks. In the event of such termination or expiration, Licensee will cease use of any corporate name incorporating any of the Mark.

2.5 Survival. The provisions of Sections 1.3, 2.4, 2.5 and 3 shall survive termination of this Agreement regardless of the reason for termination.

3. Miscellaneous

3.1 Nonassignment/Binding Agreement. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Licensee, in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, or Change of Control without the prior written consent of Licensor. Licensor expressly reserves its unilateral right to assign or transfer its interest in this Agreement. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of the foregoing will be null and void.

3.2 Independent Contractors. The relationship of the parties under this Agreement is that of independent contractors. Neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

3.3 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by first class registered mail, or air mail, as appropriate; or (c) sent by overnight courier, in each case properly posted and fully prepaid to the appropriate address set forth in the preamble to this Agreement. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

3.4 Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

3.5 Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

3.6 Integration. This Agreement (including the Attachments and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. This Agreement may not be amended, except by a writing signed by both parties.

3.7 Governing Law. This Agreement will be interpreted and construed in accordance with the laws of the State of Texas and the United States of America, without regard to conflict of law principles. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Travis County, Texas, and each party hereby consents to the personal jurisdiction thereof.

3.8 Interpretation. For purposes of interpreting this Agreement, whenever the context requires, the singular number will include the plural, and vice versa; the masculine gender will include the feminine and neuter genders; the feminine gender will include the masculine and neuter genders; and the neuter gender will include the masculine and feminine genders. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation." Any reference herein to "the parties" means the entities that are parties to this agreement; any reference to a "third party" means a person or an entity that is not a party to this Agreement.

3.9 Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

3.10 Equitable Relief. Licensee acknowledges and agrees that any breach of its obligations under this Agreement with respect to limitations upon its use of the Marks will result in irreparable harm to Licensor which cannot be reasonably or adequately compensated in damages, Licensor will be entitled to injunctive and/or equitable relief to prevent a breach and to secure enforcement thereof, in addition to any other relief or award to which Licensor may be entitled.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LICENSOR:

By: _____
Steve A. Shubin, Sr.

LICENSEE:

By: _____
Steve A. Shubin, Sr., President and CEO

Exhibit A

Licensed Trademarks

Fleshlight

Fleshjack

Fleshlight Girls

Fleshgrip

Exhibit A

Licensed Trademarks

Exhibit A of that certain Trademark License Agreement effective as of January 14, 2009 by and between Steve A. Shubin, Sr. ("Licensor") and Interactive Life Forms, LLC, a Texas limited liability corporation ("Licensee"), is hereby amended and restated in its entirety, as of December 31, 2009, to read as follows:

Fleshlight

Fleshjack

Fleshlight Girls

Fleshgrip

Fleshjack.com

Fleshlube

Sex in A Can

LICENSOR:

By: _____
Steve A. Shubin, Sr.

LICENSEE:

By: _____
Steve A. Shubin, Sr., President and CEO

Exhibit A

Licensed Trademarks

Exhibit A of that certain Trademark License Agreement effective as of January 14, 2009, as amended by and between Steve A. Shubin, Sr. ("Licensor") and Interactive Life Forms, LLC, a Texas limited liability corporation ("Licensee"), is hereby amended and restated in its entirety, as of December 31, 2010, to read as follows:

Fleshlight

Fleshjack

Fleshlight Girls

Fleshgrip

Fleshjack.com

Fleshlube

Sex in A Can

Raven Riley

Fleshwash

LICENSOR:

By: _____
Steve A. Shubin, Sr.

LICENSEE:

By: _____
Steve A. Shubin, Sr., President and CEO

Exhibit A

Licensed Trademarks

Exhibit A of that certain Trademark License Agreement effective as of January 14, 2009, as amended by and between Steve A. Shubin, Sr. ("Licensor") and Interactive Life Forms, LLC, a Texas limited liability corporation ("Licensee"), is hereby amended and restated in its entirety, as of December 31, 2011, to read as follows:

Fleshlight

Fleshjack

Fleshlight Girls

Fleshgrip

Fleshjack.com

Fleshlube

Sex in A Can

Raven Riley

Fleshwash

Blade

Sword

Equifoal

Freaks!

Flight

LICENSOR:

By: _____
Steve A. Shubin, Sr.

LICENSEE:

By: _____
Steve A. Shubin, Sr., President and CEO